

**Robert E. Franz, Jr. OSB #730915**  
E-Mail: rfranz@franzlaw.comcastbiz.net  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
P.O. Box 62  
Springfield, OR 97477  
Telephone: (541) 741-8220  
Facsimile: (541) 741-8234  
Of Attorneys for Defendants Will Stutesman,  
Officer Grose, Officer Pieske, Sgt. McAlpine,  
and the City of Eugene

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**RONDA MCGOWAN**, Personal  
Representative for the Estate of Brian  
Babb, **LEE BABB, CONNOR BABB**, by  
and through his Guardian Ad Litem,  
**STEPHANIE WOODCOOK**, and  
**KAYLEE BABB**,

Plaintiffs,

vs.

**WILL STUTESMAN, OFFICER GROSE,**  
**OFFICER PIESKE, SGT. MCALPINE,**  
**CITY OF EUGENE**, a municipal subdivision  
of the State of Oregon, **JANE DOE CALL**  
**TAKER**, and John and Jane Does 1-10.

Defendants.

Case No. 6:17-cv-00424-TC

**Declaration of**  
**Robert E. Franz, Jr.**  
in Support of Response to  
Plaintiffs' Motion for Leave  
to Take Additional Discovery  
and for Sanctions  
by Defendants Stutesman,  
Grose, Pieske, McAlpine,  
and City of Eugene

I, Robert E. Franz, Jr., under penalty of perjury do hereby declare as follows:

I am over the age of 18, and I make this declaration based on personal knowledge of the facts contained herein.

Attached hereto as Exhibit A, are true and correct copies of portions of the Deposition of Officer DeWitt taken by the Plaintiffs.

Attached hereto as Exhibit B, is a true and correct copy of the letter that was sent to attorney Timothy Volpert on November 27, 2018.

Before the Defendants filed their Motion for Summary Judgment, I conferred with Carlton Odum and Andrew Stroth by telephone. During that telephone call, I asked the attorneys for the Plaintiffs if they were willing to drop Officer Pieske and Officer Grose as defendants. The Plaintiffs' attorneys refused to do so, and indicated a motion for summary judgment would have to be filed. Then, after the Defendants filed their Motion for Summary Judgment, the Plaintiffs dropped Officers Pieske and Grose as defendants. There was no case against Officers Pieske and Grose, and the Plaintiffs' attorneys caused the Defendants undue expense in refusing to drop Officers Pieske and Grose until after the Defendants filed their Motion for Summary Judgment.

In addition, at no time during the telephone conference did Mr. Odum or Mr. Stroth ask me for the production of the photographs at issue. The photographs were not even mentioned. If the Plaintiffs' attorneys felt the photographs were important to the motion for summary judgment proceedings, all they had to do was ask me for them at that time, or bring up the issue; or advise me that the photographs had not been produced. Had the Plaintiffs' attorneys done so, the photographs would have been produced just like they were when the Plaintiffs' attorneys asked me for them after Defendants filed their Motion for Summary Judgment.

After I became the attorney for the Defendants, and before Defendants filed their Motion for Summary Judgment, no attorney for the Plaintiffs asked me for copies of the photographs. Ms. Burrows never raised the issue with me. The first time the issue was raised with me was when I received an email on November 9, 2018, from Carlton Odum, who was not even counsel of record in the case at that time. Mr. Odum stated that the photographs mentioned in the deposition of DeWitt were not produced by Defendants as requested in Request No. 4 of the Plaintiffs' first request for production. Mr. Odum requested copies of the photographs.

Request No. 4 is vague and does not specifically refer to the photographs taken by Officer DeWitt. Request No. 4. Provides as follows:

**REQUEST FOR PRODUCTION NO. 4:** Please provide copies of all reports, notes or communications by **investigative officers** concerning their investigation of the shooting of Bryan Babb. This includes police reports, evidence inventory, witness interviews, tape recordings, videotapes, photographs generated by any agency.  
(Emphasis supplied)

Officer DeWitt was not one of the investigative officers in this case.

Regardless, upon receiving the request for the photographs, I contacted the City of Eugene and asked for copies of the photographs taken by Officer DeWitt. As of November 9, 2018, I did not have the photographs in my possession, and I did not know if they had been produced. I first learned of the photographs when they were asked for by Mr. Odum.

After getting copies of the photographs from the City, I supplied copies of the photographs to the Plaintiffs on a CD that was mailed on November 27, 2018. (Exhibit B to Declaration of Robert Franz). The letter was sent to the Plaintiffs' lead attorney, Timothy Volpert. Mr. Odum could not have expected the photos be sent to him because he was not an attorney of record. Had the Plaintiffs requested

copies of the photographs from me at any time before November 9, 2018, I would have requested copies of them from the City, and produced them to the Plaintiffs just like I did.

After sending the photographs to Mr. Volpert, the photographs were used by Defendants in their Reply to the Plaintiffs' new theory of conspiracy and the alleged "planting" of the weapon as set forth in the Plaintiffs' Response. The Defendants were entitled to do. The purpose of a reply is to respond to a response. It should also be noted that the Plaintiffs went ahead and filed their Response on November 13, 2018, before I could get the photographs. The Plaintiffs' attorneys never asked me for a further extension of time to file their Response so that they could see the photographs before they filed their Response.

PURSUANT TO 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: Thursday, January 17, 2019.

By: /s/ Robert E. Franz, Jr.  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
**Robert E. Franz, Jr.**  
OSB #730915  
(541) 741-8220  
**Of Attorneys for Defendants**  
**Will Stutesman, Officer Grose,**  
**Officer Pieske, Sgt. McAlpine,**  
**and City of Eugene**



CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF ROBERT E. FRANZ, JR. IN SUPPORT OF RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO TAKE ADDITIONAL DISCOVERY AND FOR SANCTIONS BY DEFENDANTS STUTESMAN, GROSE, PIESKE, McALPINE, AND CITY OF EUGENE on Plaintiffs on Thursday, January 17, 2019, by notice of electronic filing using the CM/ECF System:

Mr. Timothy R. Volpert  
Email: [tim@timvolperlaw.com](mailto:tim@timvolperlaw.com)  
Tim Volpert PC  
610 SW Alder Street, Suite 415  
Portland, OR 97205

Mr. Andrew M. Stroth  
Email: [astroth@actioninjurylawgroup.com](mailto:astroth@actioninjurylawgroup.com)  
Action Injury Law Group, LLC  
191 N. Wacker Drive, Suite 2300  
Chicago, IL 60606

Mr. Carlton Odim  
Email: [carlton@actioninjurylawgroup.com](mailto:carlton@actioninjurylawgroup.com)  
Action Injury Law Group LLC  
191 North Wacker Drive, Suite 2300  
Chicago, IL 60606

Attorneys for Plaintiffs

Dated: Thursday, January 17, 2019.

/s/ Robert E. Franz, Jr.  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
Robert E. Franz, Jr. OSB #730915  
P.O. Box 62  
Springfield, Oregon 97477  
E-Mail: [rfranz@franzlaw.comcastbiz.net](mailto:rfranz@franzlaw.comcastbiz.net)  
Telephone: (541) 741-8220  
Facsimile: (541) 741-8234  
Attorneys for Defendants  
Will Stutesman, Matthew Grose,  
Nathan Pieske, Malcolm McAlpine,  
and the City of Eugene